

Exhibit 58

Deposition of Roger D. Blair, Ph.D.
(December 8, 2017) (excerpted)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

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VIDEOTAPED DEPOSITION OF ROGER D. BLAIR, Ph.D.

Orlando, Florida

December 8, 2017

7:57 a.m.

Reported By:
Dawn A. Hillier, RMR, CRR, CLR
Job No. 52572

ROGER D. BLAIR, Ph.D. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">14</p> <p>1 the NCAA cartel. I have another paper that's in 2 progress on rethinking baseball's antitrust exemption. 3 I have a chapter in the Oxford handbook on 4 sports economics regarding the -- you know, regarding, 5 again, baseball's antitrust exemption. And a paper in 6 the antitrust bulletin that was addressing the 7 inferences one might draw with respect to the treatment 8 that Barry Bonds got at the end of his career when his 9 contract ran out and he couldn't find anybody that 10 wanted to sign him. 11 There probably are some other things that I'm 12 not thinking of. 13 Q It sounds like you've written pretty widely in 14 the economic analysis of sports or sports economics; is 15 that right? 16 A Well, to some extent, yes. 17 Q What, if anything, would you say defines 18 sports economics as a distinct field? Or distinguishes 19 the study of sports as an economist? 20 A The economics is not different because we're 21 talking about sports. The institutions are -- you know, 22 may be different. There are -- when we're talking about 23 professional sports this spans all kinds of leagues and 24 organizations. So, you know, you could be talking about 25 the PGA Tour, which is an organization as opposed to the</p>	<p style="text-align: right;">16</p> <p>1 but other than that, are there any other distinguishing 2 characteristics about the labor markets in sports as 3 compared to other industries? 4 A Well, I mean, I don't know what you're 5 referring to or, you know, I mean, I'm assuming that 6 you've got something in mind. 7 But -- 8 Q Well let me -- let me clarify -- go ahead. 9 A No. You go. 10 Q All right. So, I guess what I'm getting at is 11 I guess some economists study industrial organizations 12 and study the way firms interact in a variety of 13 industries and don't necessarily separate out firms in 14 one industry from another. And I guess, is there 15 anything -- is there any reason -- is there any reason 16 why, looking at labor markets and sports, for example, 17 you might bring tools to bear that are different than a 18 standard -- than the standard methodologies of 19 industrial organizations? 20 A Well, so, there are some things that are a 21 little -- I guess a little unusual. A lot of the 22 professional athletes are unionized. And the union 23 is -- what the union bargains for is a little strange in 24 this sense. That the unions don't appear to be at all 25 concerned with individual compensation. And, so,</p>
<p style="text-align: right;">15</p> <p>1 National Football League, which is a -- which is a 2 league. You know, as I say, the economics aren't really 3 different. The institutions are somewhat different. 4 The -- there are some unique or idiosyncratic rules that 5 show up in collective bargaining agreements that, you 6 know, that come into play that make things -- they 7 affect the analysis, but they don't change the central 8 focus which should be in terms of -- in most cases, in 9 terms of microeconomics. To some extent, there are 10 issues that surface in terms of, like, stadium financing 11 that -- or franchise location that, you know, that give 12 rise to economic impact studies which are kind of a 13 macroeconomics thing, although, you know, they're not 14 economy wide, they're, you know, focused in or 15 centralized in, you know, certain locations. 16 You know, and there were other sorts of 17 regulations that come into play, like Title IX and... 18 But now, of course, we're getting into the 19 amateur sports. You know, so there's the NCAA, which 20 has, you know, got, you know, certain -- you know, sort 21 of unique features. But nonetheless, you know, the 22 tools of analysis are common to, you know, the economist 23 tool kit, so to speak. 24 Q Are there any -- I think -- well, you 25 mentioned there are some idiosyncratic rules and CBAs,</p>	<p style="text-align: right;">17</p> <p>1 they're sort of bargaining for a pot of money that the 2 athletes can then fight over. And, you know, I mean, 3 so, you have, you know, dollars associated with, you 4 know, a particular team. And then the athletes that are 5 going to be employed by that team essentially have to 6 try to get as much of that pool as they can, 7 individually, which is, you know -- I mean, usually what 8 you think of with unions, is that they're trying to 9 negotiate so that, you know, everybody's getting more or 10 less the same thing. And, so, you know, that would 11 be -- that would be a difference, or something that's 12 sort of idiosyncratic. 13 You know, at some level, you know, for some of 14 the -- some of the athletes are -- well, all athletes 15 have some uniqueness to their set of skills and 16 abilities. You know, some are bigger, some are faster, 17 some are stronger, some are more durable. You know, 18 some have a better feel for the game than others. And, 19 you know, there are some that, you know, that are kind 20 of superstars. And, you know, and given their skill set 21 and their abilities, they make a lot of money that -- 22 and there are players that play other positions that are 23 less talented, or at least less uniquely talented. And, 24 you know, and they make less money. And, you know, so 25 there are differences like that.</p>

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<p style="text-align: right;">18</p> <p>1 Q I think you mentioned the uniqueness of a set 2 of skills and abilities that certain players have. And 3 that in professional sports, tell me if I'm accurately 4 characterizing what you said, that in professional 5 sports, there are superstars as well; is that right? 6 A Yes. 7 Q Is it fair to say that the unique set of 8 skills that athletes have or their fame plays an 9 important role in the revenues generated by sports 10 organizations? 11 A Yeah, sure. I mean, because -- I mean, 12 because of fan appeal and, you know, the fans are more 13 willing to pay to watch some of these so-called 14 superstars. 15 Q Exactly. 16 A Yeah. Sure. 17 Q Does that characteristic of the product that's 18 being created in that -- in professional sports, does 19 that one characteristic that distinguishes it from other 20 industries where the customers of the product don't 21 really know or care who the workers are that made it, 22 necessarily? 23 MR. WIDNELL: Objection, form. 24 THE WITNESS: You mean, like when -- if I buy 25 a Toyota, I don't really have any idea who</p>	<p style="text-align: right;">20</p> <p>1 A Yeah. I mean, sure. People want to, you 2 know, may well want to see somebody like LeBron James 3 play, even though he's playing for the visiting team. 4 Sure. 5 Q So, given that sports has this characteristic, 6 which I won't call unique, but different then, let's 7 say, the Toyotas, for example, in that the ultimate 8 consumer is the fans may care about the identity of 9 the -- or the performance of the individual workers 10 producing the product, does that give rise to any unique 11 issues in studying sports as a field, as opposed to 12 other -- I'm sorry, sports as an industry as opposed to 13 other industries? 14 MR. WIDNELL: Objection, form. 15 THE WITNESS: Well, I mean, that's a specific 16 feature of the demand on the part of the fan base 17 or consumers, you know, that can influence how many 18 people are willing to buy tickets to watch. And 19 how much they're willing to pay for those tickets. 20 But, you know, the determination of those issues 21 depends on, you know, a host of factors in addition 22 to whether some famous superstar is there or not. 23 You know, has to do with promotion and has to do 24 with how well the team is doing, or teams, and how 25 close the game might be and therefore how exciting</p>
<p style="text-align: right;">19</p> <p>1 assembled the parts and who designed it and that 2 kind of thing? 3 BY MR. SILVERMAN: 4 Q Exactly. 5 A And so I'm not willing to pay a premium for 6 that Toyota because some, you know, revered designer, 7 you know, sort of designed how -- 8 Q Right. 9 A -- the car looked. 10 Okay. So, that's -- you know, lots of 11 products that we buy are like that; right? You know, 12 some of them -- some of the products, however, are 13 endorsed by movie stars or sports stars or, you know, 14 people that have certain appeal to consumers. But I 15 guess your question is, you know, am I particularly 16 interested in going to watch the Orlando Magic play 17 because they're playing against the Cleveland Cavaliers 18 and I want to watch LeBron James play. 19 Q For example. 20 A Is that -- 21 Q Yeah. Well, that's part of my question. But, 22 yeah, can you answer that question? 23 A Yeah. Sure. I mean, yeah. Of course. I 24 mean, you know, people -- 25 Q Yeah.</p>	<p style="text-align: right;">21</p> <p>1 it might be to watch. And there's a whole host of 2 things that are, you know, specific things that, 3 you know, one might want to think about when 4 analyzing questions in sports. 5 BY MR. SILVERMAN: 6 Q Changing gears for a sec. Have you testified 7 in court before as an expert witness? 8 A I have, yes. 9 Q How many times? 10 A My best estimate is about 25 times. 11 Q About how many of those cases were antitrust 12 cases? 13 A Assuming that 25 is a good estimate, I would 14 say probably something in the order of the high teens. 15 Maybe as much as 20, but... 16 That's about as good as I can do. 17 Q And have you testified on both the plaintiff's 18 side and defense side in antitrust cases? 19 A I have, yes. 20 Q How many times have you had your deposition 21 taken? That might be a tough one. If you can estimate. 22 A Probably -- probably about 60 times. 23 Q And how many times have you been retained by 24 Boies Schiller, Zuffa's attorneys in this matter? 25 A In any matter?</p>

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<p style="text-align: right;">22</p> <p>1 Q In any matter, yeah.</p> <p>2 A All right. So, I'm hesitating because I guess</p> <p>3 the answer's twice, although the retentions were kind of</p> <p>4 simultaneous.</p> <p>5 Q What were the two matters?</p> <p>6 A Well, there was, you know, a preliminary, I</p> <p>7 guess, investigation by the Seattle field office of the</p> <p>8 FTC that dealt with matters that were, you know, pretty</p> <p>9 much the same thing as the matters in this case. And</p> <p>10 then there was this case.</p> <p>11 Q Have you been retained -- other than those two</p> <p>12 matters, have you been retained as an expert witness in</p> <p>13 any other cases involving the MMA industry?</p> <p>14 A No.</p> <p>15 Q Or combat sports?</p> <p>16 A No.</p> <p>17 Q Have you ever -- before working on this case,</p> <p>18 have you ever studied combat sports?</p> <p>19 A Not in depth. But, you know, in teaching a</p> <p>20 sports economics class, I made the mistake of sending</p> <p>21 out a questionnaire to the class asking them, in the</p> <p>22 beginning, what they might be interested in my making</p> <p>23 sure that I covered. And a couple of them pointed that</p> <p>24 they were interested in MMA. And so I had to go find</p> <p>25 out something about it so that I could, you know,</p>	<p style="text-align: right;">24</p> <p>1 something that I worked on for Acushnet which is the</p> <p>2 title that makes Titleist golf balls.</p> <p>3 I don't remember any other cases.</p> <p>4 Q Okay. What was the PGA Tour case about?</p> <p>5 A Well, this was some time ago. But it had to</p> <p>6 do with -- you know, there was some dispute about</p> <p>7 eligibility requirements for the players. So, as you</p> <p>8 might imagine, when they put on an event -- I think this</p> <p>9 was for the -- I think this was actually for the senior</p> <p>10 tour events.</p> <p>11 You know, there's only so many players they</p> <p>12 can have in the field. And they had eligibility</p> <p>13 requirements. And somebody was objecting to the</p> <p>14 eligibility requirements, I guess. I think that</p> <p>15 that's -- as best I can remember, that was the issue.</p> <p>16 Q And who were you retained by in that case?</p> <p>17 A Well, it was -- I was retained by a lawyer</p> <p>18 representing the PGA Tour, or the senior tour, or</p> <p>19 whichever it was.</p> <p>20 Q And was the tour the defendant in that case?</p> <p>21 A Yes.</p> <p>22 Q Were the claims -- were there antitrust claims</p> <p>23 involved, if you recall?</p> <p>24 A Well, you know, I don't recall specifically.</p> <p>25 But there were probably some antitrust claims, you know,</p>
<p style="text-align: right;">23</p> <p>1 conduct a sensible class.</p> <p>2 But beyond that, I would say no.</p> <p>3 Q What did you -- what did you research for the</p> <p>4 purposes of your class on MMA?</p> <p>5 A I don't recall at this point.</p> <p>6 Q Have you retained -- other than the two --</p> <p>7 this case and the other one you mentioned, have you ever</p> <p>8 been retained as an expert witness in any other cases</p> <p>9 involving other professional sports organizations?</p> <p>10 A Okay. So there was a matter involving the PGA</p> <p>11 Tour that I did some work on a while ago. And then</p> <p>12 there was -- well, this didn't deal with organizations.</p> <p>13 But I mean, I worked on an RPM case that involved</p> <p>14 Callaway Golf.</p> <p>15 Q By RPM, you mean resale price maintenance</p> <p>16 or...</p> <p>17 A Yes.</p> <p>18 And then there was another matter for Callaway</p> <p>19 that dealt with a dispute with the -- I forget the name</p> <p>20 of the organization, but it's the actors' guild, you</p> <p>21 know, the union.</p> <p>22 Q SAG? Is that the Screen Actors Guild?</p> <p>23 A Yeah. Yeah.</p> <p>24 Other than that, I don't -- I don't</p> <p>25 remember -- well, there's something -- there was</p>	<p style="text-align: right;">25</p> <p>1 regarding the eligibility requirements.</p> <p>2 Q What was the basic opinion you offered in that</p> <p>3 case, if you recall?</p> <p>4 A I don't remember.</p> <p>5 Q Has any portion of your testimony ever been</p> <p>6 excluded by a court?</p> <p>7 A There was one case where I think that the</p> <p>8 district court objected to the way that I defined a</p> <p>9 relevant market for -- well, it was a relevant market</p> <p>10 for the case, but it was, you know, driven by the -- you</p> <p>11 know, a specific hospital in a, you know, fairly</p> <p>12 isolated area. And, you know, I think that there was</p> <p>13 some question about that that became moot because the</p> <p>14 case that was on appeal was settled. I can't think of</p> <p>15 anything beyond that.</p> <p>16 Q Do you remember the name of that case?</p> <p>17 A Not specifically, no.</p> <p>18 Q Was it M&M Medical Services -- some medical</p> <p>19 supplies and services versus Pleasant Valley Hospital?</p> <p>20 Does that sound familiar?</p> <p>21 A Okay. So, I know there were some -- these</p> <p>22 were -- there were a couple of durable medical equipment</p> <p>23 cases that I worked on. And, you know, and one of them</p> <p>24 was the case that I'm referring to. But I don't</p> <p>25 remember whether it was M&M specifically or not.</p>

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<p style="text-align: right;">26</p> <p>1 Q And in that case, were you offering an opinion 2 on behalf of the plaintiff? 3 A Yes. 4 Q If we turn back to your report and look at 5 paragraph eight. The section is titled "assignment." 6 And you write that your assignment was to review the 7 report -- the expert report of Andrew Zimbalist and to 8 provide your economic evaluation of his analyses and 9 form expert opinions of his analyses. And you also say 10 that you were asked to analyze UFC compensation, taking 11 into account the athlete's experience as an athlete. 12 Was that the entire scope of your assignment? 13 A As I recall, yes. 14 Q And you mentioned that your colleague, is it 15 Dr. Durrance? 16 A Yes. 17 Q And that she assisted you and you also 18 mentioned in your report that OSKR staff assisted you; 19 is that right? 20 A Yes. Yes. That's correct. 21 Q What is OSKR? 22 A It's a consulting firm located in -- I forget 23 where exactly. I always think of them as being in 24 Berkeley, but they're not actually in Berkeley, I don't 25 believe. California, that is.</p>	<p style="text-align: right;">28</p> <p>1 A So, initially, I was retained a couple of 2 years ago to -- and at that time, what was ongoing was 3 the class action was in its infancy so that that action 4 was -- you know, had been filed, but, you know, I don't 5 think that there was a whole lot of activity at that 6 point, although there may have been. The major focus of 7 my effort at that time was on the FTC matter. 8 And then, you know, and then there was a long 9 lull, in which I didn't do anything at all. And then, 10 you know, recently, I was asked to prepare a report in 11 this case. 12 Q What work did you do in the FTC matter? 13 A Well, the FTC, you know, I wasn't -- I didn't 14 participate in a lot of meetings. I went to one, you 15 know, where there was a presentation. And prior to that 16 meeting with the FTC, the FTC, as I recall -- it was a 17 couple years ago. But as I recall, they sent to Zuffa's 18 attorneys a list of items that they were interested in 19 gaining some understanding of or gaining some 20 information on. And I, you know, worked on putting 21 together the information and participating in the 22 meeting with the FTC field office to discuss the items 23 that they were interested in and to provide the 24 information that I've been able to put together at that 25 time.</p>
<p style="text-align: right;">27</p> <p>1 Q Are you affiliated with OSKR? 2 A I am not. 3 Q Who at OSKR did you work with? 4 A Andy Schwarz and Colin Weaver. 5 Q Who retained OSKR to assist you? 6 A I'm not sure who did. I didn't retain them 7 and they didn't retain me. 8 Q Have you worked with them before? 9 A Yes. 10 Q Do you know who paid OSKR's bills? 11 A I don't know for a fact, no. 12 Q And in this case, have you been compensated by 13 Zuffa or OSKR? 14 A So, administratively, what I do is submit 15 bills to OSKR. And, you know, then they deal with 16 whoever's paying the bills to get me paid. And I'm 17 assuming that it's Zuffa, but, you know, I don't -- I 18 don't know for a fact. 19 Q Did OSKR perform any analyses for you that 20 informed the opinions in your report? 21 A Well, they put together some information for 22 me that, you know, that was useful. You know, they 23 were -- whatever number crunching was involved, they 24 did. 25 Q When were you retained by Zuffa in this case?</p>	<p style="text-align: right;">29</p> <p>1 Q Did you produce a report for the FTC? 2 A You know, sort of. I mean, it's not -- I 3 mean, I wouldn't actually call it a report. But there 4 was, you know, sort of an outline of points that -- and 5 then there were some, you know, like illustrations or 6 figures to -- that addressed specific issues that the 7 FTC had raised. 8 Q Did you draw upon that work that you had done 9 for the FTC in your report that you submitted in this 10 case? 11 A No. I started over again. 12 Q How many hours did you spend preparing your 13 report in this case? 14 A Okay. That's a good question. 15 So, in the actual preparation of the report -- 16 and by that, I'm talking about, you know, all of the 17 work that I did. I don't mean just the writing of the 18 report, but what I had to do. So, for example, you 19 know, in preparing the report, I was -- I read 20 Dr. Zimbalist's report; right? So that's -- I consider 21 that part of the preparation. Is that okay? 22 Q Sure. 23 A Okay. So, in that regard, my best estimate of 24 how much time I spent, that is about 60 hours. Now, I 25 want to qualify that in this sense. That's what I felt,</p>

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<p style="text-align: right;">30</p> <p>1 you know, was reasonable for me to bill, the time that I 2 felt was okay to bill for.</p> <p>3 Now, and the reason why I say that is that, 4 you know, when I work on some of these issues, you know, 5 the issues are sort of always swarming around to one 6 degree or another in my head. But if I'm thinking 7 about, you know, something that, you know, that I've 8 read at some point, or something like that, I'm just 9 sort of thinking about that while I'm riding into the 10 university or if I'm taking a shower or, you know, on an 11 exercise bike or something, I don't bill for that time. 12 So there's a lot of time I actually spend that I 13 can't -- that I never bill for. I mean, I don't know. 14 Maybe other people do, but I don't.</p> <p>15 And, so, it was more than 60 hours of, you 16 know, of effort. But, you know, but 60 hours is 17 probably about as close as I can come to the amount of 18 time that I actually billed for the preparation of the 19 report.</p> <p>20 Q Did you or your staff perform any analyses 21 which you decided not to put in your report?</p> <p>22 A Not that come to mind, no.</p> <p>23 Q Do you know how much time OSKR billed in 24 connection with preparing your report?</p> <p>25 A I have no idea.</p>	<p style="text-align: right;">32</p> <p>1 And I just thought that out of curiosity is, you know, 2 it's somebody interested in sports, generally. But, in 3 connection with this specific case, I didn't really look 4 at that, no. I mean, other than, you know, there was 5 some description of that evolution in Dr. Zimbalist's 6 report. So, but I mean, I wasn't studying it to -- for 7 the purposes of figuring out what the evolution was.</p> <p>8 Q In preparing your report, did you consider any 9 materials involving the reserve system that existed 10 before or, you know, prior to 2011?</p> <p>11 MR. WIDNELL: Are you asking about materials 12 that he relied on in the report?</p> <p>13 MR. SILVERMAN: Yes. Let's put that. Let's 14 put the question that. Yeah.</p> <p>15 THE WITNESS: Okay. So, are you talking about 16 the reserve system that was, you know, sort of in 17 place prior to collective bargaining? Or are you 18 talking about the reserve system or parts of it 19 that survived the advent of collective bargaining?</p> <p>20 BY MR. SILVERMAN:</p> <p>21 Q I'm talking about either of those things 22 pre-2011.</p> <p>23 A Okay. Well, with -- you know in connection 24 with this matter, I think that the answer to that is no, 25 that I did not look at, you know, didn't consider that</p>
<p style="text-align: right;">31</p> <p>1 Q How about Dr. Durrance?</p> <p>2 A I don't know how much time. I would guess she 3 probably spent around the same amount of time that I 4 did. But I can't say that with certainty.</p> <p>5 Q If we turn to appendix C of your report, which 6 I believe lists the materials you considered. On the 7 second page of appendix C -- first, am I right that 8 appendix C is the materials that you considered in 9 preparing your report?</p> <p>10 A I believe so, yes.</p> <p>11 Q On the second page, it lists collective 12 bargaining agreements. And it lists a series of, I 13 guess, Major League Baseball, NBA, NFL, and NHL 14 collective bargaining agreements starting in 2001. But 15 there's less six of them total. In preparing your 16 report, did you study how any of the CBAs in these 17 professional sports evolved before 2011?</p> <p>18 A Not -- not in -- not in connection with any 19 issue in this case. I mean, I've thought about the 20 evolution of collective bargaining over, you know, from 21 the time that it began to surface in, you know, these 22 major league sports. But, you know, I was thinking 23 about that in, you know, connection with, you know, 24 writing the book that I did and teaching the course that 25 I taught, and, you know, things like that, you know.</p>	<p style="text-align: right;">33</p> <p>1 in particular. You know, I mean, I've -- but, you know, 2 but generally speaking, you know, I've paid attention 3 to, you know, the reserve clause that had been in 4 baseball for, like, a hundred years before it got kind 5 of squashed by a mediator. But not in connection with 6 the matters in this report.</p> <p>7 Q I believe you asked for an extension of time 8 to prepare your report in this case; is that right?</p> <p>9 A The -- I asked the attorneys if I could get an 10 extension on the due date, yes.</p> <p>11 Q Can you tell us what the reason was you needed 12 an extension of time?</p> <p>13 A I didn't think I could complete the report by 14 the due date.</p> <p>15 Q Did you write the book "Monopsony in Law and 16 Economics"? Or a book entitled "Monopsony in Law and 17 Economics"?</p> <p>18 A Well, not by myself. You know, Jeff Harrison 19 was co-author of that book.</p> <p>20 Q I'm going to mark as Blair Exhibit 3. 21 (Exhibit 3 was marked.)</p> <p>22 BY MR. SILVERMAN:</p> <p>23 Q This is some select excerpts from that book 24 that I'd like to go over with you.</p> <p>25 I apologize for the markings. The copy of the</p>

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<p style="text-align: right;">114</p> <p>1 But, you know, one of the things that we're</p> <p>2 implicitly assuming is that all units of the input</p> <p>3 are homogenous so that, you know, whoever, you</p> <p>4 know, you know, widgets are the same thing and</p> <p>5 they're identical. And now, it may be that in</p> <p>6 order to get more of them, you have to up the</p> <p>7 price. But that doesn't mean that they somehow</p> <p>8 become different then. They'll still provide, you</p> <p>9 know, the quality and, you know, in every dimension</p> <p>10 is the same.</p> <p>11 The other thing is that, you know, that model</p> <p>12 is a kind of, you know, spot market model in the</p> <p>13 sense that, you know, we're talking about, you</p> <p>14 know, I'm going to buy, you know, rolls of copper</p> <p>15 wire because, you know, for, you know, an</p> <p>16 electrical contracting company. And in looking at</p> <p>17 that, you know, I'm going to -- you know, the issue</p> <p>18 is, I'm going to buy five rolls instead of four</p> <p>19 and, you know, what does that do and, you know,</p> <p>20 and, you know, but the transaction's taking place,</p> <p>21 bang, all at once. You know, now, that's not true</p> <p>22 in, you know, what you're talking about because</p> <p>23 you're talking about, you know, contracts that</p> <p>24 have, you know, some inter-temporal dimension to</p> <p>25 them. And -- now, and then when we start to talk</p>	<p style="text-align: right;">116</p> <p>1 I'm sorry, how long does it take to get from that</p> <p>2 equilibrium one to equilibrium two. And we don't</p> <p>3 really -- we don't really have much to say,</p> <p>4 theoretically, about any kind of variations that</p> <p>5 may exist during that transition period.</p> <p>6 Now, one would expect, once you get into</p> <p>7 equilibrium, again, that the terms would be, if not</p> <p>8 identical, they would be the value of the total</p> <p>9 compensation -- bundle of compensation would have</p> <p>10 to be valued pretty much the same by the</p> <p>11 individual -- if we're talking about labor, the</p> <p>12 individual workers, if they're -- if they have</p> <p>13 identical skills so that this model is really</p> <p>14 appropriate, then, you know, it may well be that,</p> <p>15 you know, I'm -- I'm more risk averse than you are.</p> <p>16 So when I am trying to land a job, I want some</p> <p>17 protection.</p> <p>18 Now, you can't get protection for nothing. So</p> <p>19 the value of this set of terms, you know, I may get</p> <p>20 less in retirement benefits. I may get less in,</p> <p>21 you know, perhaps vacation time. I may get less in</p> <p>22 terms of, you know, monthly salary or something.</p> <p>23 But in exchange for that, I get some protection</p> <p>24 against, you know, being unemployed or, you know,</p> <p>25 losing benefits if I get injured or something like</p>
<p style="text-align: right;">115</p> <p>1 about some of these terms, you know, one would</p> <p>2 expect -- maybe -- maybe not -- maybe not</p> <p>3 initially, but you would expect the terms to wind</p> <p>4 up being roughly the same, you know, in a market,</p> <p>5 you know, just through adjustments over time as you</p> <p>6 move to an equilibrium. You know, again, now, you</p> <p>7 know, I don't think that we've -- we emphasized</p> <p>8 this enough when we teach economics, that most of</p> <p>9 the models that we talk about are equilibrium</p> <p>10 models. So I can tell you that, you know, we start</p> <p>11 from competition, and now you say to me, okay, so,</p> <p>12 for example, in one of the things that we were</p> <p>13 looking at before, you know, we started out with</p> <p>14 competition and there was a whole bunch of mergers</p> <p>15 and that created a dominant firm.</p> <p>16 And then we want to say, okay. So, now, let's</p> <p>17 compare what happens with this dominant firm in a</p> <p>18 fringe to what we started with. Well, what we</p> <p>19 never tell you about is how you get from that</p> <p>20 competitive equilibrium to the new dominant firm</p> <p>21 equilibrium. And in between -- I mean, first of</p> <p>22 all, as economists -- now, some labor economists</p> <p>23 may actually look at this and try to estimate this</p> <p>24 adjustment process. But by and large, you know, we</p> <p>25 don't really focus on how long does it get to --</p>	<p style="text-align: right;">117</p> <p>1 that.</p> <p>2 You know, on the other hand, somebody that is</p> <p>3 less risk averse doesn't value those protections as</p> <p>4 much as I do and, you know, and doesn't want them,</p> <p>5 and, you know, may take a different set of terms</p> <p>6 that might involve, you know, higher salary or, you</p> <p>7 know, some higher monetary benefit and, you know,</p> <p>8 as trade-off against absorbing more of the risk.</p> <p>9 So it's hard to -- it's hard to say exactly</p> <p>10 what's going to happen in that regard.</p> <p>11 MR. SILVERMAN: Yeah. Why don't we take a</p> <p>12 break. We have to change the tape.</p> <p>13 THE VIDEOGRAPHER: This is the end of media</p> <p>14 unit number two to be continued on media unit</p> <p>15 number three. 12:18 p.m., off the record.</p> <p>16 (A luncheon recess is had from 12:18 p.m. to</p> <p>17 1:14 p.m.)</p> <p>18 THE VIDEOGRAPHER: Here begins media unit</p> <p>19 number three in the continued deposition of</p> <p>20 Roger D. Blair. We're going back on the record at</p> <p>21 1:14 p.m.</p> <p>22 BY MR. SILVERMAN:</p> <p>23 Q Welcome back. I would like to turn your</p> <p>24 attention back to the -- your textbook, "Sports</p> <p>25 Economics," that we were looking at before. And on page</p>

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<p style="text-align: right;">118</p> <p>1 343 of that book, you write in a section called Demand 2 for Athletic Talent, [as read]: We begin our analysis 3 of the sports labor market by assuming that it is 4 competitively structured. For the most part, however, 5 sports labor markets are not competitive. Nonetheless, 6 the competitive model provides a useful benchmark for 7 comparison with the actual results. In addition, it 8 introduces a way of measuring a player's value to his 9 club. Athletes are employees of their respective clubs 10 which are business firms that produce athletic 11 competition that is sold to the fans. We begin our 12 analysis with the principles that drive the employment 13 decisions of profit maximizing firms. In general, labor 14 is an input in the production process. No one demands 15 labor services for their own sake. Instead, labor is 16 demanded because it can be used to produce something 17 that the employer can sell. Consequently, the demand 18 for labor is a derived demand. It is derived from the 19 demand for the output that the labor is used to produce. 20 In the sports business, players, coaches, and managers 21 are employed by their clubs to produce athletic 22 competition which is what the clubs sell to the fans. 23 The demand for athletic talent is derived from the fans' 24 demand for watching the games that the athletes play. 25 So, can you explain for me -- well, let me</p>	<p style="text-align: right;">120</p> <p>1 Q Okay. Is the demand for fighter talent in MMA 2 derived from the fans' demand for watching MMA events 3 featuring those fighters? 4 MR. WIDNELL: Objection, form. 5 THE WITNESS: Well, it may not be those 6 fighters, but the demand for MMA talent is -- you 7 know, is a derived demand from -- it's derived from 8 the demand by fans for watching MMA bouts. 9 BY MR. SILVERMAN: 10 Q Given that MMA is an individual sport which 11 pits certain fighters against other fighters, is it 12 possible that fans have very different levels of demand 13 for bouts featuring certain fighters rather than others? 14 MR. WIDNELL: Objection, form. 15 THE WITNESS: Sure. 16 BY MR. SILVERMAN: 17 Q Have you analyzed how much fan demand is 18 affected by the particular fighters who appear in an MMA 19 event? 20 A Not specifically, no. 21 Q I think we covered this, but in a competitive 22 market, an employer pays their employees the marginal 23 revenue product of their labor; is that right? 24 A Yeah. In a competitive market, the firm is 25 going to expand employment to the point where the</p>
<p style="text-align: right;">119</p> <p>1 start by asking, do you agree that labor is a derived 2 demand? 3 MR. WIDNELL: Objection, form. 4 THE WITNESS: I think you misspoke slightly. 5 BY MR. SILVERMAN: 6 Q Sorry. Yeah. 7 Do you mean that -- scratch that. Let me ask 8 the question again. 9 Do you agree that the demand for labor is a 10 derived demand, it is derived from the demand for the 11 output that the labor is used to produce? 12 A Yes. 13 Q Okay. What is the output that the UFC 14 produces using the athlete's labor in MMA? 15 A It provides -- what it's supplying are, you 16 know, events that consist of a number of bouts, MMA 17 fights. 18 Q Do you agree that with this quote that I just 19 read, that the demand for athletic talent is derived 20 from the fans' demand for watching the games that the 21 athletes play? 22 A Yeah. That's the same question. 23 Q Yeah. Essentially. 24 Just specific to sports and fans, I guess. 25 A Yes.</p>	<p style="text-align: right;">121</p> <p>1 marginal revenue product is equal to the wage that is, 2 you know, comes from the demand and supply in the market 3 as a whole. 4 Q And so then the wage that that firm pays will 5 equal that margin revenue product; is that right? 6 A Yes. And assuming that the -- that we're in a 7 profit maximizing equilibrium, that is that the firm has 8 been successful in actually maximizing profit. And when 9 that's the case, the marginal revenue product will be 10 equal to their wage. 11 Q And we discussed how a monopsonist pays 12 something less than the marginal revenue product of 13 labor; right? 14 A Yes. 15 Q And that leads to a transfer of surplus from 16 the worker to the monopsonist; right? 17 A Relative to the competitive solution, yes, 18 that's correct. 19 Q At page 345 of your textbook, you write [as 20 read]: A professional team's focus on marginal revenue 21 product is illustrated by the Cincinnati Reds' 22 assessment of Ken Griffey, Jr.'s presence in 2000. The 23 team expected to gain 20 million in new revenues due to 24 his presence in the line-up. Attendance rose by some 25 500,000 fans during the 2000 season which translated</p>

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<p style="text-align: right;">122</p> <p>1 into 16 million in additional gate receipts and 2 concession revenues. Merchandise sales rose another 3 1.9 million. Arguably, Griffey's marginal revenue 4 product, or MRP was nearly 18 million which was less 5 than the Reds had hoped for, but more than Griffey was 6 paid, which was 7 million.</p> <p>7 Does this paragraph illustrate the sort of 8 analysis that an economist would engage in to try to 9 estimate an athlete's marginal revenue product?</p> <p>10 MR. WIDNELL: Objection, form.</p> <p>11 THE WITNESS: I don't know if you would do 12 that on -- I don't know if you could do that on a 13 very broad basis. What I was trying to do -- 14 that's an illustration. And, you know, what it 15 indicates, of course, is that Griffey didn't do a 16 good job bargaining for, you know, for his salary 17 because he wound up getting substantially less than 18 what one might think was the -- his marginal 19 revenue product.</p> <p>20 Now, as an illustration of -- you know, that 21 general idea of looking at marginal revenue 22 products, it got those -- there's a source for, you 23 know, where I got the information in order to write 24 up that. You know, if you were looking at, you 25 know, marginal revenue products, you know, more</p>	<p style="text-align: right;">124</p> <p>1 MR. WIDNELL: Objection, form.</p> <p>2 THE WITNESS: Well, that's certainly one of 3 the -- you know, one of the benefits; right? I 4 mean, presumably, with Ken Griffey, Jr., you were 5 getting, you know, one of the best baseball players 6 that ever lived. And, you know, that would do a 7 couple of things to -- in terms of benefits for the 8 team. I mean, number one, just because, you know, 9 he was a remarkable player and people would be 10 interested in watching him play. You know, that 11 would have a positive effect. But in addition to 12 that, you know, because of his talent, they should 13 have won -- all else being equal, they should have 14 won more games --</p> <p>15 BY MR. SILVERMAN:</p> <p>16 Q Um-hum.</p> <p>17 A -- as a result. And that usually makes the 18 fans happier and, you know, and might well lead to some 19 additional attendance as well. But, you know -- but, 20 again, what you would want to be sure is that you're 21 taking into account other sources of those changes. If 22 you're just looking at the change in attendance from one 23 year to the next, it's 500,000 fans. And you say, well, 24 we added Griffey. Well, if you attribute all of that 25 increase to Ken Griffey, Jr., that might be a mistake</p>
<p style="text-align: right;">123</p> <p>1 generally, you might want to -- to see whether that 2 increase in attendance of 500,000 was motivated by 3 something else. I mean, you know, Griffey may not 4 have been the only player that was attracting fan 5 attention. You know, it could have been that the 6 ball club had invested in, you know, other 7 promotional activities that led to increased 8 attendance, at least in part. I mean, I wouldn't 9 say that Griffey had nothing to do with it, but, 10 you know.</p> <p>11 And, so, if you were looking at this in, you 12 know, a broader context, than just to provide an 13 illustration for students, you know, you would 14 probably want to look at some other things as well.</p> <p>15 BY MR. SILVERMAN:</p> <p>16 Q So I understand, you're saying it can be -- 17 you know, this is just an illustration and it's not 18 obvious to that you can attribute, you know, 500,000 19 fans, specifically, to Griffey, for example. But is 20 the -- is the method of analysis correct in the sense 21 that to measure the marginal revenue product of an 22 athlete, one acceptable way to approach that problem 23 would be to try to measure the additional -- the number 24 of additional fans that that athlete brings to their 25 employer, essentially?</p>	<p style="text-align: right;">125</p> <p>1 because, you know, we'd have to take into account what 2 else happened. I mean, there may well have been, you 3 know, a change in economic conditions that led to, you 4 know, fans spending more money on going to baseball 5 games. It could have been, you know, any number of 6 things, as I mentioned before.</p> <p>7 BY MR. SILVERMAN:</p> <p>8 Q Is this -- it sounds like you're -- it sounds 9 like you're pointing out a correlation causation issue 10 with this example; is that right?</p> <p>11 A Not entirely. I mean, to some extent, it is a 12 distinction between correlation and causation. But 13 it's -- you know, I would feel comfortable -- you know, 14 if everything else was constant, which is, you know, 15 sort of hard to, you know, find situations like that 16 empirically. But if everything else was constant and, 17 you know, the only real difference that you can see is 18 that Ken Griffey, Jr., is now playing right field or 19 wherever he was playing, instead of somebody else, then, 20 you know, I wouldn't feel uncomfortable attributing 21 causation to the increase in attendance being due to Ken 22 Griffey, Jr. It's just that if you're going to try to 23 do that, you still have to control for all the other 24 things that actually aren't constant. Because, you 25 know, in -- you know, real empirical settings, you know,</p>

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<p style="text-align: right;">126</p> <p>1 there's a lot -- there are a lot of things that are</p> <p>2 changing. And you have to try to control for them. And</p> <p>3 some of them are going in opposite directions.</p> <p>4 Q Sure.</p> <p>5 A You know, you might have lost somebody that,</p> <p>6 you know, somebody may have retired or quit that was,</p> <p>7 you know, a fan favorite. And, you know, I can't go</p> <p>8 watch that guy and I don't really care about Ken</p> <p>9 Griffey, Jr. I mean, you know, I would, personally,</p> <p>10 but, you know.</p> <p>11 Q Right.</p> <p>12 A But, hypothetically, I might not care about</p> <p>13 him, but I care about this other guy, and so I stopped</p> <p>14 going to the games. And, you know, so, that means that,</p> <p>15 you know, that Ken Griffey, Jr., offset that loss as</p> <p>16 well as having some impact on, you know, positive impact</p> <p>17 on the total attendance. But, again, you know, you have</p> <p>18 to look to see, you know, do we have a new manager, do</p> <p>19 we have, you know, some, you know, rookie phenom</p> <p>20 that's --</p> <p>21 Q Right.</p> <p>22 A -- come into play.</p> <p>23 Q So abstract -- but abstracting away from</p> <p>24 the -- from the empirical measurement difficulties,</p> <p>25 which I understand you to be talking about, just asking</p>	<p style="text-align: right;">128</p> <p>1 for a sports organization is generally related to the</p> <p>2 number of fans who buy tickets or gate receipts,</p> <p>3 concession revenues, merchandise sales, licensing rights</p> <p>4 for television. Those are the main types or sources of</p> <p>5 revenue that, that an athlete would generate for a</p> <p>6 sports organization; is that right?</p> <p>7 MR. WIDNELL: Objection, form.</p> <p>8 THE WITNESS: Parking. Yeah. Parking,</p> <p>9 concessions, gate receipts. You know, the</p> <p>10 broadcast licensing, you know, differs from league</p> <p>11 to league -- right? -- because of the way they</p> <p>12 handle that. You know, there's more local stuff in</p> <p>13 baseball, for example, than in football, whatever.</p> <p>14 You know, pretty much you've got national contracts</p> <p>15 that, you know, they're league-wide. And, you</p> <p>16 know, so that's -- you know, that's somewhat</p> <p>17 different, but, yeah, I mean, sure. Jersey sales,</p> <p>18 any kind of souvenirs and that kind of stuff.</p> <p>19 BY MR. SILVERMAN:</p> <p>20 Q And, so, it's fair to say that Ken</p> <p>21 Griffey, Jr.'s ability to put fans in the seats paying</p> <p>22 for tickets and concession and merchandise and all of</p> <p>23 these things, that made him more valuable to the</p> <p>24 Cincinnati Reds; right?</p> <p>25 A I wouldn't say it made him more valuable. It</p>
<p style="text-align: right;">127</p> <p>1 conceptually, what is it we're trying to measure, when</p> <p>2 we're trying to measure an athlete's marginal revenue</p> <p>3 product? So, for example, is it fair to say that,</p> <p>4 assuming it's possible, maybe there's no -- maybe</p> <p>5 there's no empirical experiment that would let you do</p> <p>6 this. But assuming it's possible, holding all other</p> <p>7 things equal, essentially the question you're trying to</p> <p>8 ask is, how much revenue that this organization</p> <p>9 generates can be attributed directly to the efforts of</p> <p>10 this -- of this athlete. Is that fair?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 THE WITNESS: Yeah. I mean, you're trying to</p> <p>13 look at the -- you know, the marginal benefit of,</p> <p>14 you know, of that athlete's contribution.</p> <p>15 BY MR. SILVERMAN:</p> <p>16 Q Um-hum.</p> <p>17 A Yes.</p> <p>18 Q And, in the sports context, the marginal</p> <p>19 benefit of that athlete's contribution is going to</p> <p>20 manifest it -- well, it's revenue. We're talking about</p> <p>21 revenue to the organization ultimately; right?</p> <p>22 A Well, ultimately what they're interested in is</p> <p>23 profit -- right? -- but revenue's part of that; right?</p> <p>24 So...</p> <p>25 Q And, and, that revenue in the sports context</p>	<p style="text-align: right;">129</p> <p>1 made him valuable --</p> <p>2 Q Right.</p> <p>3 A -- to the Cincinnati Reds.</p> <p>4 Q Or his value was related to his ability to do</p> <p>5 those things, essentially?</p> <p>6 A Yes, that's correct.</p> <p>7 Q So, players who can generate more ticket sales</p> <p>8 generate more revenue because they generate more fan</p> <p>9 interest. Those players are also generally paid more;</p> <p>10 right?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 THE WITNESS: You mean, they're paid more than</p> <p>13 other athletes that don't have the same level fan</p> <p>14 appeal.</p> <p>15 BY MR. SILVERMAN:</p> <p>16 Q That's right. That's my question.</p> <p>17 MR. WIDNELL: Same objection.</p> <p>18 THE WITNESS: I think generally that would be</p> <p>19 correct.</p> <p>20 Well, let me modify that. I mean, so, you</p> <p>21 know, as a broad statement, I think, that that's,</p> <p>22 that's probably correct. Now in, you know, Major</p> <p>23 League Baseball, for example, you know, the -- you</p> <p>24 know, the rookie contracts don't provide for any</p> <p>25 free agency for six years. And, so, in the</p>

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<p style="text-align: right;">130</p> <p>1 first -- especially in the first three years before 2 the players are eligible for final offer 3 arbitration, you know, they get paid -- it almost 4 doesn't matter how popular they are. The teams 5 don't have to pay them much. And so you saw 6 players like Kris Bryant for the Cubs and Mike 7 Trout for the Angels getting paid, you know, 4- or 8 \$500,000. When their contribution -- I haven't 9 done any calculations, but I'm convinced, you know, 10 would have been far above that.</p> <p>11 So -- and then even when they're eligible for 12 final offer arbitration, you know, I think that the 13 estimates I've seen suggest that the outcome of the 14 final arbitration, you know, if you actually go 15 through the arbitration, that the -- the values 16 tend to be, on average, a little somewhat below the 17 marginal revenue products, although they're 18 reasonably close.</p> <p>19 So, the statement that I was sort of agreeing 20 with was for free agents.</p> <p>21 BY MR. SILVERMAN:</p> <p>22 Q Gotcha. So, for free agents, their marginal 23 revenue product -- strike that. 24 For free agents, their wage approaches their 25 marginal revenue product whereas it might not for</p>	<p style="text-align: right;">132</p> <p>1 at the -- looking at baseball, for example -- and I'll 2 get more -- more into the details of this later. But 3 you've mentioned that depending on the seniority of the 4 player and various other rules, some players aren't free 5 agents or they're restricted free agents of some sort; 6 is that right?</p> <p>7 A Yes.</p> <p>8 Q And in your opinion from your experience 9 studying baseball, is it true that players who aren't 10 free agents who don't have full free agency are 11 generally paid a smaller -- a smaller proportion of 12 their marginal revenue product than the free agents?</p> <p>13 A Yes.</p> <p>14 Q Why is that? Can you explain why that is?</p> <p>15 A Well, you know, we talked about this, you 16 know, before lunch. You know, when the player -- you 17 know, if you have a player that's in his second year in 18 the major leagues, you know, he's had a good rookie 19 season and he goes and he talks to the general manager 20 and, you know, along with his agent, and they're 21 bragging about what a great job he did, and the team 22 agrees and gives them a \$10,000 raise or, you know, 23 whatever is permissible under the collective bargaining 24 agreement.</p> <p>25 But the player, in bargaining, you know, the</p>
<p style="text-align: right;">131</p> <p>1 players whose mobility is restricted; is that right?</p> <p>2 A Yeah. I mean, now, you know, there's a 3 bargaining element in there. And so, you know, you get 4 a range of outcomes. So it may not be exactly that. 5 But, you know, it should be -- it should be reasonably 6 close. Because you've got -- usually you have an 7 experienced agent representing the player who's 8 bargaining with an experienced employer. And so they 9 kind of know -- both sides know what's going on. It's 10 not like the experienced employer can take advantage of 11 some, you know, player that's, you know, inexperienced 12 and doesn't know how to bargain. You know, usually 13 they -- especially the really good players have got very 14 experienced agents who, you know, are a reasonable match 15 for the employers.</p> <p>16 Q So, in the league sports, I think you said in 17 the league sports, for free agents, they are, in your 18 opinion, paid something close to their marginal revenue 19 product?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 THE WITNESS: Yeah. Aside from some frictions 22 and whatnot that arise during the bargaining 23 process, yes.</p> <p>24 BY MR. SILVERMAN:</p> <p>25 Q But, in those same league sports, like looking</p>	<p style="text-align: right;">133</p> <p>1 player's next best alternative is not very good, 2 relative to what he's being offered. Right? So they 3 have to pay -- let's say they have to pay him at least 4 \$450,000 under the terms of the -- you know, the 5 collective bargaining agreement. They don't have to go 6 much above that because for most baseball players -- 7 well, for most people, \$450,000 is a lot more than the 8 next best alternative. So, that tilts the bargaining 9 power in favor of the team. And, you know, they're 10 not -- they just don't have to pay much more than, you 11 know, than what's being -- you know, what's either in 12 the collective bargaining agreement or some nominal 13 increase above the minimum salary or, you know, 14 whatever.</p> <p>15 Q Is it fair to say that for most professional 16 athletes, at least in -- that's, you know, baseball, 17 football, basketball, hockey in the United States, 18 alternative employment options outside of their 19 particular professional sport aren't a reasonable 20 substitute?</p> <p>21 MR. WIDNELL: Objection, form.</p> <p>22 THE WITNESS: Well, of course, it depends on 23 what we mean by reasonable substitute.</p> <p>24 Now, if, you know, you know, if you're a 25 talented left tackle, you know, in the National</p>

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<p style="text-align: right;">134</p> <p>1 Football League, you know, you may command, you</p> <p>2 know, millions of dollars in annual salary because,</p> <p>3 as a free agent, you can negotiate with various</p> <p>4 teams.</p> <p>5 And, so, what would that -- if that left</p> <p>6 tackle stopped playing football, you know, what</p> <p>7 else would that person do? Well, it depends on the</p> <p>8 person, of course. You know, we don't know what</p> <p>9 the alternatives actually are, you know. Maybe the</p> <p>10 guy would be a rock singer and maybe make more</p> <p>11 money, but, you know, or maybe he would be a high</p> <p>12 school football coach and make a whole lot less</p> <p>13 money. You know, it just -- you know, it depends</p> <p>14 on the individual what the -- what the alternative</p> <p>15 employment opportunities are.</p> <p>16 BY MR. SILVERMAN:</p> <p>17 Q Well, what if we look -- I mean, if we talk</p> <p>18 about this in the terms of the DOJ and FTC, horizontal</p> <p>19 merger guidelines, for example, and they talk about</p> <p>20 reasonable substitutes. And I think they ask the</p> <p>21 question, well, if a hypothetical, in this case,</p> <p>22 monopsonist, controlled -- let's say if we're talking</p> <p>23 about football -- all of the teams in the NFL, which</p> <p>24 could be accomplished in reality by them all just</p> <p>25 colluding with each other, as essentially they did under</p>	<p style="text-align: right;">136</p> <p>1 do that profitably, which means that not so many</p> <p>2 people would walk away that, you know, that it --</p> <p>3 that it would be -- become unprofitable.</p> <p>4 I mean, to some extent, I guess, you could --</p> <p>5 you could look at it that way.</p> <p>6 BY MR. SILVERMAN:</p> <p>7 Q Going back to earlier, I think you said that</p> <p>8 in baseball, free agents are, today, I think we were</p> <p>9 talking about today, are paid something close to their</p> <p>10 marginal revenue product, and that younger players or</p> <p>11 players who aren't free agents are probably paid</p> <p>12 something less than their marginal revenue product.</p> <p>13 Is the same thing true for the other three</p> <p>14 major sports: Hockey, football, and basketball, in the</p> <p>15 U.S.?</p> <p>16 MR. WIDNELL: Objection, form.</p> <p>17 THE WITNESS: Well, they've got -- you know,</p> <p>18 so these sports vary in terms of what happens for</p> <p>19 the entry-level players. So, the contracts are --</p> <p>20 you know, the terms of the contracts and the</p> <p>21 restrictiveness of the free agency is, you know,</p> <p>22 varies in football, depending upon what round you</p> <p>23 got drafted in.</p> <p>24 You know, I don't know about basketball. I'm</p> <p>25 just not sure about the details of those, those</p>
<p style="text-align: right;">135</p> <p>1 the reserve clause, could they profitably suppress the</p> <p>2 wage below the competitive level; right? Does that --</p> <p>3 is that a reasonable way of assessing this question of,</p> <p>4 well, are other -- are other jobs for the player a</p> <p>5 reasonable substitute?</p> <p>6 MR. WIDNELL: Objection, form, misstates.</p> <p>7 THE WITNESS: Well, to some extent, that's</p> <p>8 accepting the DOJ and FTC's interpretation of some</p> <p>9 meaningful deviation in the compensation.</p> <p>10 Usually it's expressed in terms of elevating</p> <p>11 the price. Here, we're talking about depressing</p> <p>12 the price. And, you know, when they, in</p> <p>13 practice -- what they talk about under certain</p> <p>14 conditions, implies elasticities of something like</p> <p>15 20, and it's really hard to find products that</p> <p>16 are -- you know, where you actually have an</p> <p>17 elasticity of 20.</p> <p>18 So, but, I understand what you're talking</p> <p>19 about. You're talking about, you know, you have</p> <p>20 this hypothetical monopsonist that controlled all</p> <p>21 employment options for labor that fits into a</p> <p>22 certain category. You know, could they depress the</p> <p>23 wage by something on the order of five or</p> <p>24 ten percent, I suppose, for a non-transitory amount</p> <p>25 of time, and would that -- you know, and could they</p>	<p style="text-align: right;">137</p> <p>1 leagues.</p> <p>2 BY MR. SILVERMAN:</p> <p>3 Q I guess to just abstract out a little bit away</p> <p>4 from the details of the restricted free agency in</p> <p>5 various leagues, is it fair to say that -- that while</p> <p>6 the details varied by the type of player, potentially,</p> <p>7 and the league, that all of them impose on some set of</p> <p>8 players some limitation on mobility so they're not a</p> <p>9 complete free agent for some substantive players; is</p> <p>10 that right?</p> <p>11 A That's my understanding, yes.</p> <p>12 Q As a matter of economic theory, does it make</p> <p>13 sense that those players, due to those restrictions,</p> <p>14 would make something less than a full free agent, as</p> <p>15 compared to their marginal revenue product, some smaller</p> <p>16 percentage of their marginal revenue product than a full</p> <p>17 free agent?</p> <p>18 MR. WIDNELL: Objection, form.</p> <p>19 THE WITNESS: You know, so, there are other --</p> <p>20 there are other aspects of that; right?</p> <p>21 So, they've got -- you know, originally -- not</p> <p>22 originally. Before the last change in football,</p> <p>23 the first round draft picks got salaries that</p> <p>24 probably far exceeded their marginal revenue</p> <p>25 product.</p>

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<p style="text-align: right;">138</p> <p>1 Now, now, what they've done in the last 2 agreement -- see, they put some limitations on 3 the -- how much a team can pay those early round 4 draft picks. Nonetheless, we've seen some examples 5 in the last couple years of first-round draft picks 6 that were not ready to play. There was -- I forget 7 one of the quarterbacks was not ready to play. And 8 he basically didn't play much at all his rookie 9 season. But he still made millions of dollars. 10 And so, you know, in that case, he must have been 11 paid far more than his marginal revenue product for 12 that year because he wasn't -- you know, it wasn't 13 that he wasn't contributing anything, but, you 14 know, basically he wasn't playing. And, you know, 15 if he's sitting on the bench, fans aren't coming 16 out to watch him sit on the bench. 17 So, you know, I can't completely agree with 18 what you're saying. 19 You know, in basketball -- sorry about that. 20 You know, in basketball, you know, I think that 21 there's -- I think there's some limitations as 22 well. Ordinarily, in basketball, it seems like 23 they don't have -- they don't -- people who aren't 24 ready to play don't get drafted very highly, and 25 therefore, you don't have those same examples that</p>	<p style="text-align: right;">140</p> <p>1 then, a player dealt with a pure monopsonist. There was 2 no one else who could or would bid for his services. 3 For most premier athletes, there are no alternative 4 occupations that are even close in terms of 5 compensation. A few athletes can play other sports and 6 can credibly -- can credibly threaten to go elsewhere, 7 but not many. 8 Do you agree, that as far as most premier 9 athletes are concerned, there are no alternative 10 occupations that are even close in terms of compensation 11 compared to their professional sport? 12 A For most of them, yes. 13 You know, there are exceptions like Bo Jackson 14 and -- God, I'm drawing a blank on some of the other 15 names. But, you know, there are other people that 16 played multiple -- actually played at the highest 17 level -- 18 Q Right. 19 A -- in, you know, various sports. 20 Q But just a few exceptions generally; right? 21 MR. WIDNELL: Objection, form. 22 THE WITNESS: Yeah. There aren't very many, 23 no. 24 BY MR. SILVERMAN: 25 Q So, I mean, you talk here in the same</p>
<p style="text-align: right;">139</p> <p>1 you find in football. And then I'm just not much 2 of a hockey fan, so I don't know much about hockey. 3 BY MR. SILVERMAN: 4 Q And, for the NFL and for basketball, when 5 players are restricted free agents, the period of time 6 when they were restricted free agents, does it make 7 economic sense that they would get paid a lower 8 proportion of their marginal revenue product than if 9 they were full free agents? 10 MR. WIDNELL: Objection, form. 11 THE WITNESS: I'd have to -- you know, I 12 haven't looked at the -- you know, the specifics of 13 the impact of being a restricted free agent as 14 opposed to a free agent. And without having some 15 specifics regarding any limitations, I have a hard 16 time answering that question, sorry. 17 BY MR. SILVERMAN: 18 Q If we look at page 350 of your textbook, under 19 the reserve clause, you write [as read]: As we saw in 20 the discussion of competitive balance, the reserve 21 clause in the standard player contract bound a team to 22 one -- excuse me, bound a player to one team for as long 23 as that team wanted to employ the player's services. 24 The player's only alternative was to retire from the 25 league and change occupations. Once under contract</p>	<p style="text-align: right;">141</p> <p>1 paragraph about -- about -- I'll read what you write. 2 [As read]: Michael Jordan, arguably the best basketball 3 player of all time, tried his hand at baseball. He was 4 mediocre and could not play at the major league level. 5 And then you conclude, most successful, professional 6 athletes stick to one sport. 7 Does that sound right? 8 A Yeah. I mean, there's people, like, as I say, 9 Bo Jackson, Danny Ainge played basketball and pro 10 baseball. 11 Again, you know, there are a couple of others, 12 but, yeah, I mean, most of the -- you know, so, for 13 example, I mean, you didn't see Tom Brady trying his 14 hand at baseball or basketball. 15 Q Right. And if he did, he'd probably get paid 16 a lot less; right? 17 A He probably wouldn't get paid anything at all. 18 Q On the next page, page 351, you write [as 19 read]: With the demise of the reserves -- reserve 20 clause, players gain the measure of freedom. There are 21 still some limits which are part of the collective 22 bargaining agreement. But there are completely 23 unrestricted free agents in all major league sports. 24 Free agents should get the benefit of competition for 25 those services which would mean higher salaries. Faced</p>

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<p style="text-align: right;">142</p> <p>1 with that prospect, owners have simply colluded at times</p> <p>2 to avoid competing in the player market.</p> <p>3 Is that accurate?</p> <p>4 A I believe so, yes.</p> <p>5 Q And the limits that are placed on free agency</p> <p>6 in the major league sports, those are the result of</p> <p>7 collective bargaining between the players' union and the</p> <p>8 team owners; right?</p> <p>9 A Yes.</p> <p>10 Q What did you mean in this paragraph that I</p> <p>11 just read when you said -- or when you wrote [as read]:</p> <p>12 Free agents should get the benefit of competition for</p> <p>13 their services, which would mean higher salaries? If</p> <p>14 you recall?</p> <p>15 A You mean, why did I say "should" in some sort</p> <p>16 of normative sense?</p> <p>17 Q Yeah, normative sense. Is it better that free</p> <p>18 agents get the benefit of competition for those</p> <p>19 services?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY MR. SILVERMAN:</p> <p>22 Q Or is that what you meant?</p> <p>23 A I guess, you know, if you think about what</p> <p>24 else we're talking about by collusions, so, you know, in</p> <p>25 the absence of collusion, you would expect that they</p>	<p style="text-align: right;">144</p> <p>1 And that kept, you know, compensation down, or whatever</p> <p>2 it was they were fighting over at the time. So that,</p> <p>3 you know, there were episodes where there's collusion.</p> <p>4 And, you know, and then you don't get the results that</p> <p>5 you would expect to get in the absence of collusion.</p> <p>6 Q And you talked earlier about the abstract</p> <p>7 model of monopsony and how monopsony leads to -- in</p> <p>8 labor markets, at least leads to workers getting paid</p> <p>9 something below their marginal revenue product. And</p> <p>10 that that leads to socially non-optimal outcomes.</p> <p>11 Is the same thing true in sports?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 THE WITNESS: Well, in the first part, you</p> <p>14 know, what leads to social welfare loss is not the</p> <p>15 depressed wage, but the restricted employment.</p> <p>16 Because, by restricting the employment, what you're</p> <p>17 doing is you're failing to employ inputs where the</p> <p>18 value of using them in producing the product is</p> <p>19 higher than the social cost of their being</p> <p>20 employed, which is measured by the height of the</p> <p>21 supply curve.</p> <p>22 So that's what causes that. What happens with</p> <p>23 the depressed wage in that case is that there's a</p> <p>24 transfer of what ordinarily would have been</p> <p>25 supplier surplus or producer surplus, you know,</p>
<p style="text-align: right;">143</p> <p>1 would get -- and again, this comes out of, you know,</p> <p>2 there could be some frictions in the bargaining process</p> <p>3 and that kind of thing that would -- would lead to some</p> <p>4 differences. And there are always uncertainties, so...</p> <p>5 But, you would expect that they would get paid</p> <p>6 pretty much what the marginal benefit that they make for</p> <p>7 the team, which is the marginal revenue product.</p> <p>8 And I think that the "should" in there, and I</p> <p>9 mean, I wrote this a long time ago. But I think the</p> <p>10 "should" in there is opening up the possibility that</p> <p>11 you're not getting this competition and that, you know,</p> <p>12 if the owners are colluding as, you know, their</p> <p>13 demonstrated episode in Major League Baseball. And then</p> <p>14 there was actually a subsequent episode that wasn't very</p> <p>15 well publicized in baseball. We know that the owners in</p> <p>16 the NFL colluded when they had that -- I forget the -- I</p> <p>17 forget the word now, when you get -- when you decide</p> <p>18 that you're going to -- when the players just voted</p> <p>19 to -- to get rid of the union. I forget what the</p> <p>20 word -- the name.</p> <p>21 Q Decertify?</p> <p>22 A Yeah. When they decertified the union, you</p> <p>23 know, there was supposed to be some -- there should have</p> <p>24 been a free-for-all. And apparently the owners agreed</p> <p>25 among themselves not to engage in that free-for-all.</p>	<p style="text-align: right;">145</p> <p>1 whatever term we want to apply to that in a labor</p> <p>2 market. You know, and that gets transferred to the</p> <p>3 employers in the form of higher profits.</p> <p>4 And, so, and that's kind of a transfer. But</p> <p>5 the welfare loss is from restriction in the</p> <p>6 employment. And, so, that's the way that's set up.</p> <p>7 So, so, with that in mind, what was your</p> <p>8 question about sports, then?</p> <p>9 BY MR. SILVERMAN:</p> <p>10 Q Well, I guess the first question is: Do you</p> <p>11 think that monopsony in the -- in sports markets, let's</p> <p>12 say through collusion by the clubs in Major League</p> <p>13 Baseball, for example, leads to any social harm?</p> <p>14 MR. WIDNELL: You're just asking about</p> <p>15 baseball now?</p> <p>16 MR. SILVERMAN: Yeah. Let's talk about</p> <p>17 baseball for now.</p> <p>18 THE WITNESS: Okay. So, so the way that --</p> <p>19 that the monopsony is manifested in baseball, for</p> <p>20 example, has to do with things like the roster</p> <p>21 size. Okay? So, so, there's a -- you know,</p> <p>22 there's a limit to the roster size. And, if you</p> <p>23 assume -- now, I don't know for a fact, you know,</p> <p>24 as an empirical matter whether this is, in fact,</p> <p>25 correct, but if you assume that the binding</p>

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<p style="text-align: right;">146</p> <p>1 constraint so they would have more people on the</p> <p>2 roster than they actually have in the absence of</p> <p>3 that constraint.</p> <p>4 You know, you would say -- you know, you would</p> <p>5 infer the same sort of thing, that is that since</p> <p>6 it's a binding constraint, the teams would get</p> <p>7 additional value out of having more players on the</p> <p>8 roster. And, you know, assuming that they could</p> <p>9 find people to play, fill out that larger roster,</p> <p>10 which let's just assume that's possible, you would</p> <p>11 have the same sort of welfare loss. And that is</p> <p>12 that you have players that would contribute to the</p> <p>13 overall value and that are not being employed. And</p> <p>14 so there's a loss in value there. So, in that</p> <p>15 sense, you know, there would be a social welfare</p> <p>16 loss by that restriction.</p> <p>17 You know, the fact that, say, Kris Bryant, you</p> <p>18 know, some budding star of the Chicago Cubs, you</p> <p>19 know, to the extent that they're paying him, let's</p> <p>20 say, \$500,000 and his marginal revenue product is</p> <p>21 far above that, that does not create any social</p> <p>22 harm because he's still playing. It's just he's</p> <p>23 getting paid less so there's a distributional</p> <p>24 effect, but, you know, but there's not a welfare</p> <p>25 loss there.</p>	<p style="text-align: right;">148</p> <p>1 trying to earn a living, you know, as a</p> <p>2 construction worker. So, the quality of the play,</p> <p>3 you know, had to suffer. I mean, now, you know,</p> <p>4 again, you know, you'd have to -- you know, people</p> <p>5 would ask for some empirical evidence of this. But</p> <p>6 you would -- you would surmise that the play would</p> <p>7 have to suffer when you've got players that are</p> <p>8 working construction instead of what, instead of</p> <p>9 training, instead of lifting weights, stretching,</p> <p>10 perhaps, you know, taking a hundred swings in the</p> <p>11 batting cage every day during the off season, or</p> <p>12 whatever -- you know, whatever major league players</p> <p>13 are doing now to maintain and advance their skills</p> <p>14 during the off season.</p> <p>15 Well, you know, a lot of players, back in the</p> <p>16 days when they didn't make much money, had to work</p> <p>17 at other jobs. And, you know, some of them sold</p> <p>18 insurance and, you know, things like that.</p> <p>19 So --</p> <p>20 BY MR. SILVERMAN:</p> <p>21 Q And could --</p> <p>22 A And in that case -- well, your question is</p> <p>23 what effect would this have. And, you know, I think the</p> <p>24 effect that it would have is that the quality of the</p> <p>25 play would be lower and that, you know, in turn, could</p>
<p style="text-align: right;">147</p> <p>1 BY MR. SILVERMAN:</p> <p>2 Q Is it possible that paying players</p> <p>3 substantially below their marginal revenue product could</p> <p>4 alter their incentives to invest, let's say, in their</p> <p>5 own training or their own professional development?</p> <p>6 Could that lead to a potential welfare loss?</p> <p>7 MR. WIDNELL: Objection, form.</p> <p>8 THE WITNESS: Okay. So, so, if you think back</p> <p>9 to -- of course, I'm a lot older than everybody</p> <p>10 else in the room. But when I was a kid, the -- you</p> <p>11 know, the players in Major League Baseball, in the</p> <p>12 off season -- now, I think this -- this was</p> <p>13 actually before I had a vivid -- any actual</p> <p>14 recollection, but there were stories about, you</p> <p>15 know, following the World Series. They would</p> <p>16 actually have major league stars barnstorming</p> <p>17 throughout the south playing exhibition games for</p> <p>18 extra money instead of training and, you know, and</p> <p>19 that kind of thing.</p> <p>20 You know, they had people that were, I</p> <p>21 remember being a Dodgers fan, that Carl Furillo</p> <p>22 was, you know, one year he was a National League</p> <p>23 batting champion. And he worked in construction.</p> <p>24 He had a hard hat job in the off season. And so he</p> <p>25 wasn't working on his baseball skills. He was just</p>	<p style="text-align: right;">149</p> <p>1 have an impact on fan demand for watching major league</p> <p>2 games and, you know, and then, you know, to that extent,</p> <p>3 the value of the product that's being offered, that is</p> <p>4 the competition of the field, you know, is lower and</p> <p>5 consumers are worse off as a result.</p> <p>6 Q And couldn't that -- isn't that also a form of</p> <p>7 allocative inefficiency if the marginal revenue product,</p> <p>8 let's say, of this athlete working in a construction job</p> <p>9 is less than the social value or the value -- or the</p> <p>10 revenue generated simply by the fan interest that they</p> <p>11 would generate if they had devoted that time and energy</p> <p>12 to training, let's say?</p> <p>13 A Yeah. You know, the problem -- the problem</p> <p>14 with the way you worded that, is that allocative</p> <p>15 inefficiency is -- sounds like it ought to be -- have a</p> <p>16 more popular meaning than it does to economists. You</p> <p>17 know, to an economist that allocative inefficiency is a</p> <p>18 term of art and it means what I described earlier, that</p> <p>19 is, that certain inputs in the case of, you know, where</p> <p>20 we're talking about inputs or in terms of output that,</p> <p>21 you know, things are either not being purchased or not</p> <p>22 being produced, when the value is higher than the cost.</p> <p>23 And so there's a foregone value, and that's</p> <p>24 what the -- that's what the allocative inefficiency is</p> <p>25 related to. So, you know, we say that the monopolists,</p>

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<p style="text-align: right;">150</p> <p>1 you know, there's allocative inefficiency associated 2 with the monopolist, because the monopolist does not -- 3 does not put in enough resources to produce the welfare 4 maximizing quantity of output that it -- because it 5 restricts output. 6 And on the purchase side for buying inputs or 7 hiring inputs, as the case may be, that the decision is 8 to -- is allocatively inefficient because too few 9 resources are being purchased or hired in the sense that 10 their value exceeds their social cost. So that's 11 what -- so allocative inefficiency has a technical 12 meaning. And you're asking me a question that relates 13 to what happens to perhaps shifts in the demand 14 functions. And that's a different matter. 15 Q Let me step back a beat and just ask you, is 16 it your opinion that the reserve system was 17 anticompetitive on balance, which is related to what 18 we're talking about? 19 A You mean historically? 20 Q Historically. The historic reserve system. 21 A Is anticompetitive? 22 Q Um-hum. 23 A Is that the question? 24 Q Yeah. 25 A Sure.</p>	<p style="text-align: right;">152</p> <p>1 if it leads to, you know, lower prices paid and lower 2 quantities purchased, you know, we think of those -- 3 that conduct as being anticompetitive. You know, it's 4 you know, conduct or practices that prevent competition 5 between alternative producers or alternative employers, 6 you know, we think of as being anticompetitive. 7 Q And we discussed how the reserve clause gave 8 teams monopsony power over the players and we discussed 9 how that led to suppressed salaries. Did it also lead 10 to lower output? 11 A I don't think it led to lower output in the 12 sense that, you know, the teams -- the leagues had, you 13 know, at that time, a -- you know, a schedule of 154 14 games. And, you know, it's hard to say whether it led 15 to a reduction in outputs in the National League. It 16 was in place back in the 1800s, you know, so... 17 But by the same token, it's hard to imagine 18 that you get many more games into a season anyway since 19 you only have basically six months to play, which is 180 20 days. And if you got 154 games, back in those days, the 21 travel was by train and bus and stuff. I mean, it's 22 just, you know, it's hard to imagine that they could 23 have played many more games than that anyway, but, you 24 know. 25 In principle, maybe there was some, you know,</p>
<p style="text-align: right;">151</p> <p>1 Q And why? 2 A Because the reserve system, you know, was in 3 agreement among the major league teams to use a standard 4 player contract that had the evergreen provision, or 5 provisions whenever a collection of terms in the 6 contract is what we commonly refer to as the reserve 7 clause, which, you know, may have been more than a 8 clause. But constituted that reserve system so that, 9 you know, once a player was signed to a contract, that 10 the -- you know, the club had property rights in that 11 contract and, you know, no one else could gain access to 12 that unless they sold it or traded it. 13 And, you know, so the agreement among all the 14 teams to respect that provision in the contract for all 15 the other teams meant that they were agreeing, you know, 16 not to compete for the services of any player that was 17 under contract to a different team. 18 Q What is -- how would you define -- as a 19 scholar of antitrust economics, how would you define 20 what it means for a practice to be anticompetitive? 21 A Well, a practice -- I mean, ordinarily, we 22 think of a practice as being anticompetitive if it's -- 23 if we're talking about the output market, at least the 24 higher prices, lower quantities, lower quality. 25 And, you know, similarly, on the buying side,</p>	<p style="text-align: right;">153</p> <p>1 marginal reduction in the number of games. You know, I 2 can't -- I can't say, but... 3 Q So, when you say that the reserve clause was 4 anticompetitive, then, are you referring mostly to its 5 effect on players' salaries on that input price? 6 A Well, it's that and the -- I mean, just on its 7 face, when you describe, you know, what that reserve 8 system involved, you know, it did limit the competition 9 between teams for a particular player's services. 10 Right? So, if you and I want to hire the same player, 11 and he's under contract to me, then you have to buy that 12 contract from me either for cash, or you could trade 13 somebody else's contract for that contract. 14 But, you can't simply go to the player and 15 say, hey, why don't you -- next season, why don't you 16 play for me, because there's an agreement that you and I 17 are not going to compete in that way. 18 Q Does any agreement -- I'm sorry. Does any 19 practice that limits the competition between teams for a 20 particular player's services anticompetitive? 21 MR. WIDNELL: Objection, form. 22 MR. SILVERMAN: Strike that. Let me rephrase 23 that. 24 BY MR. SILVERMAN: 25 Q Is any practice that limits the competition</p>

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<p style="text-align: right;">174</p> <p>1 of causation but, you know, but I think that the facts</p> <p>2 unroll, you know, more or less the way that they're</p> <p>3 spelled out there.</p> <p>4 MR. WIDNELL: We've been going for about an</p> <p>5 hour and a half. Can we take a break when you get</p> <p>6 to a convenient stopping point?</p> <p>7 MR. SILVERMAN: Sure. Yeah. Let me do just a</p> <p>8 couple more and then, yeah.</p> <p>9 MR. WIDNELL: Okay.</p> <p>10 BY MR. SILVERMAN:</p> <p>11 Q On page 434, you discuss the National</p> <p>12 Basketball Players Association. And you write on the</p> <p>13 second to last paragraph, the bottom of that paragraph.</p> <p>14 [As read]: With the settlement of the lawsuit, the NBA</p> <p>15 players enjoyed true, unrestricted free agency. Now</p> <p>16 when an individual player's contract expires, the</p> <p>17 player's completely free to sign with the highest bidder</p> <p>18 or any other team willing to hire them. As long as the</p> <p>19 clubs do not collude in a free agent market, a player</p> <p>20 can negotiate a contract that will pay him something</p> <p>21 very close to his marginal revenue product.</p> <p>22 Does that sound accurate to you?</p> <p>23 A Yes.</p> <p>24 Q And on page 435, you write about the national</p> <p>25 hockey league. [As read]: The NHLPA has had some</p>	<p style="text-align: right;">176</p> <p>1 A Well, I think that all of those contracts</p> <p>2 are -- yeah. I think that they're specified in terms of</p> <p>3 shares of, you know, percentages of some amount which is</p> <p>4 defined as -- you know, as revenue. So, the -- you</p> <p>5 know, what you and I might think of as revenue might</p> <p>6 not -- some of those items might not be counted.</p> <p>7 You know, I think that the definition of what</p> <p>8 constitutes league revenue is -- you know, is set out in</p> <p>9 the collective bargaining agreement so that they're not,</p> <p>10 you know, squabbling over, you know, what the size of</p> <p>11 the total pie is that's supposed to be split up.</p> <p>12 And, as I recall, you know, it's pretty much,</p> <p>13 you know, these are -- these are forecasted, you know,</p> <p>14 based on, you know, recent experience.</p> <p>15 Yeah. And as I said, in there, in the NFL,</p> <p>16 that gets translated into salary caps, which specify how</p> <p>17 much each team can spend. But, I think what they do is</p> <p>18 they take, you know, whatever that percentage of the</p> <p>19 anticipated league revenue, whatever that amount is,</p> <p>20 they divide by 32 because that's how many teams there</p> <p>21 are. And, you know, and each team gets 1/32 of that</p> <p>22 amount to spend on players because they have a pretty</p> <p>23 hard salary cap, although there's a lot of strategic</p> <p>24 manipulation of that amount. It's not quite as simple</p> <p>25 as it sounds.</p>
<p style="text-align: right;">175</p> <p>1 internal problems, but appears to be on relatively solid</p> <p>2 ground now. As with the other leagues, NHL players have</p> <p>3 the usual array of benefits. Their salaries are</p> <p>4 substantial as they are protected by market forces</p> <p>5 through free agency.</p> <p>6 Is that accurate?</p> <p>7 A I believe so, yes.</p> <p>8 Q And on page 438, you write [as read]: The</p> <p>9 NFLPA, the NBAPA, and the NHLPA bargain over the total</p> <p>10 wage bill. The results are expressed as salary caps</p> <p>11 which limit the total payroll of each club. In Major</p> <p>12 League Baseball, there is no salary cap, but there's a</p> <p>13 luxury tax that is imposed on clubs that spend more than</p> <p>14 some threshold amount. The unions have little to do</p> <p>15 with the allocation of the salary dollars. Players</p> <p>16 bargain for salary dollars on their own with the help of</p> <p>17 an agent. Most of the other terms of employment,</p> <p>18 working conditions, pensions, contract terms are subject</p> <p>19 to negotiations between the union and the league. The</p> <p>20 player's salary however is an individual matter between</p> <p>21 the club and the player.</p> <p>22 So, is it accurate to say that other than in</p> <p>23 Major League Baseball, collective bargaining determines</p> <p>24 the total share of league revenues that can go to</p> <p>25 players as compensation?</p>	<p style="text-align: right;">177</p> <p>1 Q So, the team -- so, the collective bargaining</p> <p>2 is determining a -- strike that.</p> <p>3 So, through collective bargaining in the NFL,</p> <p>4 the NBA, and the NHL, the players in the leagues are</p> <p>5 splitting some measure of league revenue; is that right?</p> <p>6 A Yes.</p> <p>7 Q And that split sets a -- for those three</p> <p>8 sports, at least, that split sets a salary cap; is that</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q Or is it used to set a salary cap?</p> <p>12 A Yes.</p> <p>13 Q But the actual salaries that the players end</p> <p>14 up negotiating with their teams are determined by market</p> <p>15 forces for free agents, at least; is that right?</p> <p>16 MR. WIDNELL: Objection, form.</p> <p>17 THE WITNESS: Yeah. And the bargaining that</p> <p>18 goes on between the player and his agent with the</p> <p>19 team.</p> <p>20 BY MR. SILVERMAN:</p> <p>21 Q On page 443 --</p> <p>22 MR. WIDNELL: You know, I apologize. I really</p> <p>23 do need to take a break.</p> <p>24 MR. SILVERMAN: Oh, you need to do it now?</p> <p>25 Okay. All right. Let's do it then.</p>

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